Supreme Court, U.S.
FILED
09-101 APR 13 2009
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IN THE
Supreme Court of the United States

PATRICIA SMITH, E/O WILLIE F. SMITH, PATRICIA SMITH; MARY SCOTT; CHRISTINE SMITH,

Petitioners,

vs.

THOMAS JEFFERSON UNIVERSITY HOSPITAL; JEFFERSON MEDICAL COLLEGE; VINCENT ARMENTI, MD.; ANDREA CLARK, RN.; BECKIE MICHAEL, D.O.; BRENDA HOFFMAN, MD., INTERMEDIATE DIALYSIS UNIT; ATTORNEY MARCY TANKER; ROBERT A. JUBELIRER, MD.; ATTORNEY VAL PLEET WILSON; ATTORNEY FREDRIC GOLDFEIN

Respondents,

On Petition for a Writ of Certiorari
to the Eastern District of Pennsylvania
(Civil Action No. 08-2478
District Judge: Honorable Norma L. Shapiro

PETITION FOR WRIT OF CERTIORARI

Mary J. Scott PRO SE
Christine Smith, PRO SE
Patricia Smith, PRO SE
8219 Thouron Ave.
Philadelphia, PA 19150
(215) 248-1040

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QUESTIONS PRESENTED FOR REVIEW

MARY SCOTT, CHRISTINE SMITH, PATRICIA SMITH, PRO SE, are respectfully submitting the following questions for review by the Supreme Court of the United States, that we believe are governed by authority:

U.S. Constitution Amendment VII
U.S. Constitution Amendment XIV
28 U.S.C.§ 1443
42 U.S.C.§§ 181 and 182
42 U.S.C.§§ 183, 185, 186, and 1988.

1. Did Philadelphia Common Pleas Trial Court, Judge Jacqueline Allen, erred, with the enforcement of a non-binding mediation settlement?

2. Are mediation settlement legal or equitable without a Jury Trial Waiver, with major medical malpractice cases?

3. Are non-binding mediations settlement signed by attorneys, without consent enforceable?

4. Are uninformed contracts used in hospitals for surgical procedures involving patient/physician practice legal?

5. Are Philadelphia Court of Appeals, allowed to change the court order listing a non-binding mediation to an arbitration?

6. Was Judge D. Michael Fisher required to recuse himself, as former attorney general of Pennsylvania in 1996, required to investigate fraud and credential lying, and the National Transplantation Pregnancy Registry?

7. Was Judge D. Michael Fisher required to recuse himself with the knowledge that his wife, Mrs. Carol Fisher was a co-worker of Dr. Vincent Armenti and assisted him with several educational studies and research at Temple University?

8. Was Judge Majorie Rendell required to recuse herself, regarding the failed MCARE Act of her husband, Governor Edward Rendell of Pennsylvania who instituted this law?

LIST OF PARTIES

Judge Jacqueline Allen

Judge Norma L. Shapiro

Judge D. Michael Fisher

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APPENDIX B: In the United States District Court for the Eastern District of Pennsylvania, Judge Norma L. Shapiro, order dated 6/11/08 – rules to show causes on June 23, 2008.

APPENDIX C: In the United States District Court for the Eastern District of Pennsylvania, Judge Norma L. Shapiro, order dated July 3, 2008 – dismissed lack of jurisdiction. Notice of appeal & petition for review filed with the United States Court of Appeals for the Third Circuit, on July 28, 2008.

APPENDIX D: United States Court of Appeals for the Third Circuit, opinion filed February 10, 2009, by Circuit Judges Fisher, Jordan and Van Antwerpen. (Unsigned with changes made from mediation to arbitration)

APPENDIX E. United States Court of Appeals for the Third Circuit Petition for rehearing denied and signed by circuit Judge D. Michael Fisher, on March 5, 2009.

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JURISDICTION

The United Sates Constitution Article III vested the judicial power of the United States in one Supreme Court, while 28 U.S.A. §§1291-1295 grants appellate jurisdiction to the lower federal courts of appeal.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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STATEMENT OF CASE

Mary Scott, Christine Smith and Patricia Smith, appeal the district court's orders that are in violations of:

U.S. Constitution Amendment VII

U.S. Constitution Amendment XIV

28 U.S.C. § 1443

42 U.S.C. §§ 181 and 182

42 U.S.C. §§ 183, 185, 186, and 1988

This matter arises from a major medical malpractice case, without a jury trial, without a waiver of a jury trial, that involved credential lying, fraud, by Dr. Vincent Armenti, with Thomas Jefferson University hospital an un-licensed medical/surgeon, in causing the death of the decedent, Mr. Willie F. Smith, and eight other patients, with all nine cases cited, dismiss, in the Philadelphia Court of Common Pleas, without a jury trial, with several judges erred in securing his medical/surgeon license.

This matter arises from a major medical malpractice case, without a jury trial, enforcement of an unauthorized, non-binding mediation settlement, fraudulently signed by Attorney Val Pleet Wilson, on April 12, 2007, for $105,000., with all prior demands for a jury trial, jury assessment for over five million dollars, with discovery and disclosure of the facts to a jury and medical consumers.

(Attorney Val Pleet Wilson, fraudulently signed off on a non-binding mediation settlement, without a jury trial waiver, with his signature the only one on file, is illegal and un-enforceable by Philadelphia Common Pleas Court Judge Jacqueline Allen.)

This matter arises from a major medical malpractice case, without a jury trial, without a waiver of a jury trial, where Dr. Vincent Armenti, with Thomas Jefferson University Hospital, did not have a medical/surgeon, vascular surgeon license, in causing the death of the decedent Mr. Willie F. Smith, and eight other patients with Thomas Jefferson University Hospital.

Dr. Vincent Armenti, worked as the founder of the National Transplantation Pregnancy Registry, (NTPR), in Philadelphia, Pennsylvania since 1991, human research and misrepresented his credential as a medical/surgeon, vascular surgeon, with credential lying, was aided and abetted by Thomas Jefferson University Hospital, and the respondents to secure tax payer funding under the MCARE Act, pharmaceutical and medical devise research funding, federal cigarette settlement funding, without disclosure to the American citizens, consent waiver were never provided to his patients, regarding his illegal human research, with Thomas Jefferson University Hospital, and now above the law, and to big to fail, with the American citizens, medical consumers still at risk, under his human research with (NTPR). without informed consent.

This matter arises from a major medical malpractice case, without a jury trial, without a waiver of a jury trial, where Attorney Val Pleet Wilson, participated in a fraudulent, non-binding mediation settlement, with no waiver of jury trial rights, and no waiver of jury trial clause were presented by Philadelphia Common Pleas Court Judge Jacqueline Allen, and mediation retired Judge Abraham Gafni.

Attorney Val Pleet Wilson, filed and signed a fraudulent non-binding mediation settlement of $105,000, with several Philadelphia Common Pleas Court document filed, demanding over five million dollars, jury trial assessment of damages, prior to his non-binding fraudulent mediation settlement of $105,000, without a waiver of jury trial, disclosure of fraud, credential lying by the respondents are invalid and illegal.

(See: Simlerv. Conner, 372 U.S. 221 (1963)
Johnson v. Zerbst (304 U.S. 458)
Aetna Insurance Co. v. Kennedy 301 U.S. 389 (1937)
Fuentes v. Shevin (407 U.S. 67) (1972)

The MCARE Act provisions, that were constructed by an insurance attorney, and enacted by Governor Edward Rendell, in Pennsylvania are inconsonant with, and, are in violation of the United States Constitution and the Federal Arbitration Act. which does not include enforcement of an mediation settlement.

A major medical malpractice case, with jury assessment of damages, hearing required with the Court of Common Pleas of Philadelphia County, Pennsylvania, by Writ of Summons, filed on February 1, 2005, against the respondents, Thomas Jefferson University Hospital, Jefferson Medical College, Vincent Armenti, MD., Andrea Clark, RN., Beckie Michael, D.O., Brenda Hoffman MD., Et al, under docket No. 050104090, filed by Attorney Val Pleet Wilson, ID. No. 25787, complaint and notice to defend with damages listed as five million dollars, credential lying by the defendents, Dr. Vincent Armenti, with Thomas Jefferson University and College.

Attorney Val Pleet Wilson presented a letter to the respondents attorneys, Fredric Goldfein, esquire and Attorney Marcy B. Tanker to defend there illegal actions of fraud and obstruction of the forged discharge signature of the decedent, Mr. Willie F. Smith.

On March 27, 2007, Attorney Val Pleet Wilson, filed a motion to preclude testimony, argument, causation, increased risk of harm provided by the respondent, Dr. Robert A. Jubelirer, who refused to produce his credential, with no specialty license, in the field of vascular surgery, resulting in the death of the decedent, Mr. Willie F. Smith by exsanguination, on February 24, 2003.

Philadelphia Common Pleas Court Judge Jacqueline Allen, did not enter a decision regarding the motions filed in the case. A mediation hearing was scheduled with retired Judge Abraham Gafni, where the respondents requested separate rooms away from the petitioner, Mary Scott, Patricia Smith, Christine Smith to defend the major medical malpractice case, credential lying, fraud, forged signature, and obstruction by the respondents.

The respondents refused to provided there credentials and Dr. Vincent Armenti discharges summary.

Mediation Judge Abraham Gafni, was unable to provide a decision in this case, regarding credential lying, fraud, forged signature and obstruction by the respondents in concealing the deaths of Dr. Vincent Armenti patients, with Thomas Jefferson University Hospital.

The Court of Common Pleas of Philadelphia, Judge Jacqueline Allen under case file No. 4090 order No. 31925, erred, with the enforcement of a fraudulent non-binding mediation settlement that was presented by the respondents, without disclosure and a jury trial.

The district courts erred in refusing to secure the respondent Dr. Vincent Armenti, and Dr. Robert A. Jubelirer, credentials, and specialty license verification.

The Court of Common Please of Philadelphia, Judge Jacqueline Allen erred with the refusal of a jury trial.

Credential, board certification in specialty surgery are accepted as admissible evidence resulting from numerous appellate court decisions in the United States, under the abuse of discretion standards:

See: Campbell v. Vinjamuri, 19 f. 3d. 1274 (8th CIR. 194). Williams v. Memorial Medical Ctr., 460 S.E. 2d 558 (Ga. CT. APP. 1995. Sommers v. Friedman, 493 N.W. 2d 393 (WIS. CT. APP.1992).

Dr. Vincent Armenti with Thomas Jefferson University Hospital, founder of the National Transplantation Pregnancy Registry (NTPR) for human subject research, cross states lines throughout the United States, with credential lying, educational and specialty surgeon, vascular, transplant, heart and kidney transplant surgeon lying, in causing death, harm to thousands of citizens in the United States.

The law states that it is illegal for a doctor to call himself a surgeon who is not a surgeon, and to practice surgery without a license in surgery.

Dr. Vincent Armenti, license should have been removed, as well as other penalties place against him for causing the death of the decedent Mr. Willie F. Smith and the several other deaths.

When are our Federal Courts going to say that they are going to take responsibility here, you are authorized by law to protect the rights and welfare of all law abiding citizens, not

for a few who think they are above the law. The use of private laws and private practices in the Courts of Philadelphia an excuse for inaction of our laws, or changes in the facts to prevent the lawsuit outcome, example: in our case we were in a mediation hearing which is not binding legally. The United States Court of Appeals for the third circuit have now change this to an arbitration hearing in which the petitioners had no such participation. Our rights to a jury trial have been prevented by the Courts of Philadelphia, our six and fourteenth amendment rights have been illegally taken away, with illegally changing the lawsuit facts, with documented proof that a mediation hearing was attended and not an arbitration hearing, which is another way of the Courts of Philadelphia, in trying to end our legal and Constitutional rights of this lawsuit. It is important that these illegal acts be monitored closely, the guilty are punished, and the rights to have a trial by jury requested in this lawsuit.

The medical background check on Dr. Vincent Armenti verified that he was not a surgeon, nor was he trained in the field of the surgery, documented by the American Board of Surgery. The United States Court of Appeals for the third circuit tried to dismiss the facts that he mislead his clients by calling himself a surgeon, which have resulted in the death of the decedent Mr. Willie F. Smith and eight other patients with Thomas Jefferson University Hospital.

Violation to our constitutional rights and the rights to a jury trial have been illegally denied throughout these lawsuits. Illegal conduct and acts of fraud by the respondent have continued in view of the United States Court of Appeals for the third circuit here in Philadelphia, Pennsylvania. After several lawsuits filed, Dr. Vincent Armenti preceded in furthering his career, without any penalties placed against him. Dr. Vincent Armenti failure to notify the state licensure

that a lawsuit was pending, his medical malpractice insurance were paid by the MCARE act, (The MCARE act have been abolished in the state of Pennsylvania to date. The used of tax-payers money to fund this law instituted by Governor Edward Rendell in the state of Pennsylvania have prevented citizens from rightfully pursuing justice and their constitutional rights. The MCARE act require a certificate of merit from a physician, when they were bias in their results, whereas the death certificate and autopsy report is the result of several physicians.

The federal courts must determined that the (state) court judgement was erroneously entered or must take action that would render the judgement ineffectual.

"Rooker-Feldman is implicated,
Ernst v. city of youth servs.,
108 F. 3d 486, 491 (3d CIR. 1997)
Also see: Charchenko v. city of stillwater, 47 F. 3d 981, 983 (8th CIR. 1995).

Rooker-Feldman operates as a bar "if" the relief requested in the federal actions requires determining that the (state court decision) is wrong or would void the state courts ruling.

Philadelphia Common Pleas Court Judge Jacqueline Allen, ended and relinquish all state responsibility, stating that fraud, credential lying, obstruction, forgery, were not a matter before her court.

The National health care anti-fraud association, Federal Bureau of Investigations, and the Justice Department launched a newly form task force in June 2008, to investigate medical fraud, and to review the (states) medical boards' disciplinary actions against fraud perpetrators.

A show cause hearing was conducted on June 23, 2008, in the United States District Court for the Eastern District of the Pennsylvania, with district Judge Norma L. Shapiro. Federal district court Judge Norma L. Shapiro was provided with a formal legal brief and a letter dated April 30, 2008, form the American Board of Surgery, that verified medical and credential lying by Dr. Vincent Armenti, who is listed as the founder of NTPR, National Transplantation Pregnancy Registry in Philadelphia, Pennsylvania in 1991, misrepresenting his credential as a kidney transplant surgeon, heart surgeon, vascular surgeon, attending, and Professor of surgery, without any certifications in the field surgery and specialty surgeon, in which he recently and fraudulently obtained his general surgeon certification by failing to disclose his education and credential lying, nine wrongful deaths cases cited against him with Thomas Jefferson University Hospital, in Common Pleas Court of Philadelphia, to assure continued participation and medical funding in a 400 billion dollars plus pharmaceutical and medical device industries

(WITHOUT DISCLOSURE)

To ensure, Thomas Jefferson University Hospital 157, 7 million dollars in profits for the fiscal year of 2007.

To ensure a limited amount issued by the State of Pennsylvania catastrophe fund of $105,000, an non-existent settlement, without an investigation, with his medical malpractice insurance, funded by taxpayers dollars, with no legal penalties placed against Dr. Vincent Armenti, and Thomas Jefferson University Hospital for fraud, educational and credential lying since 1991, who is listed as the NTPR, National Tansplantation Pregnancy Registry, causing major harm to pregnant woman and children in the United States and possibly in other countries.

To ensure a no or partial reversal of the 311 million dollars settlement with the Justice Department and the United States Department of Health and Human Services in 2007, in which documents were available to former United States district Attorney Patrick Meehan, with the investigation of Dr. Vincent Armenti in 2005, by the New York Attorney General office, where educational and credential lying was not disclosed. Dr. Vincent Armenti and Thomas University Hospital refused to provide medical education and his specialty surgeon certification to date, in causing the deaths of Mr. Willie F. Smith and eight other patients death, with Thomas Jefferson University Hospital, with an unknown amount of patients with the National Transplantation Pregnancy Registry, in reviewing there new informed consent document for human subject research.

To ensure no disclosure to the major pharmaceutical and medical device corporation, of Dr. Vincent Armenti with Thomas Jefferson University Hospital concealment of medical education and with no specialty surgery certification to date, and the federal government administrative agencies regarding human subject research, in which Dr. Vincent

Armenti and Thomas Jefferson University Hospital violated the United States patients safety laws since 1991 to date.

(Violation of the petitioners constitutional 14th Amendment rights) MCARE & right to know laws and act, to ensure my family, public health safety, with Thomas Jefferson University Hospital, and that the physicians/specialty surgeons were license with certification, training to correctly use the pharmaceutical and medical devices.

Common Pleas Court Judge Jacqueline Allen decline to accept jurisdiction, and the lack of jurisdiction with credential lying of the respondents, Dr. Vincent Armenti, with Thomas Jefferson University Hospital, with the knowledge that all nine wrongful death, medical malpractice cases were adjudicated by her senior administrative Judge O' Keefe, Judge A.J. Bonavitacola, in failing to secure Dr. Vincent Armenti, credential, license, personnel and educational files, where he cause the death of the decedent, Mr. Willie F. Smith, and eight other patients with Thomas Jefferson University Hospital under their jurisdiction. Judge Arnold New adjudicated a case for Dr. Vincent Armenti, who also failed to secure his medical and specialty surgeon credentials.

See Court of Common Pleas of Philadelphia Court Cases:

(Thompson v. Armenti) Case Id. No. 921003077.
(Mkee, Et al v. Thomas Jefferson University Hospital
Case ID. No. 950502026.
(Dinoia Case ID. No. 020803536.

Attorney Fredric Goldfein, illegally represented Dr. Vincent Armenti, with Thomas Jefferson University Hospital, with his intentional concealment of the truth of Dr. Vincent Armenti Credential lying, personnel and educational lying cause the death of the decedent, Mr. Willie F. Smith, and eight patients with Thomas Jefferson University Hospital, with a total disregard of our laws that governs patient safety.

See cases: Smith v. Armenti Case Id. No. 050104090,
Federal Civic Action Case No. 08-2478,
Federal Appeal Case Id. No. 08-3238,
Smith v. Thomas Jefferson University
Hospital, Vincent Amenti, MD., Et al.
Gallagher v. Thomas Jefferson University Hospital
Case Id. No. 961002124, case filed 10/14/96.

Common Pleas Court Judge Jacqueline Allen, enter a order to enforce fraudulent non-existent meditation settlement that was presented by the respondents, to include Attorney Val Pleet Wilson, in the amount of $105,000, intentional concealment of a crime, ensuring no jury assessment of six million dollars and disclosure of fraud, credential lying, personnel and educational files lying of Dr. Vincent Armenti, with Thomas Jefferson University Hospital.

Violation of our Constitutional rights, were all wrongful death, medical malpractices case in Philadelphia County, Pennsylvania, with a high population of minority are assigned to mediation center, where jury assessment of

millions of dollars are only awarded in a less minority populated counties and regions in Pennsylvania, with no danger of credential lying to there resident. (see case with Attorney Fredric Goldfein, (Murphy v. Temple Lower Bucks Hospital, court and case no. C.P. Bucks Co. No. 200303635, with the plaintiffs' being awarded a 4.7 million jury verdict, with additional penalties placed for delayed actions of the case was awarded six million, one hundred and seventy six thousand dollars from an accredited physician, surgeon and hospital, in Lower Bucks County, Pennsylvania.

(Please note: Attorney Fredric Goldfein, illegally represented Dr. Vincent Armenti, with credential lying, personnel and educational fraud since October 14, 1996)

Federal Judge Norma Shapiro, failed to provide a notice of appeal, and information regarding the Supreme Court ruling of the United States, where both courts failed to exercise and decline jurisdiction, was protected from being time-barred, based on the supreme court ruling in the United States.
See case: Jinks v. Richland County, South Carolina, Et al. certiorari to the Supreme Court no. 02-258
Title 28 U.S.C. § 1367(d)
Title 28 of the U.S. Code § 1654, U.S.C. § 1654, 28 U.S.C. Section 1367(d)

To learn that we have no constitutional rights as a minority family in the United States from a seated federal Judge Norma Shapiro is unacceptable.

To learn that we have no constitutional rights as a law abiding black family in Philadelphia County, Pennsylvania, and the United States, from a seated federal Judge Norma Shapiro, is unacceptable.

41(1) Authorizes the federal courts to try "lawsuits were the matter in controversy arises under the constitution or laws of

the United States, whether these are suites in equality or at laws".
(See Dooley United States 182 U.S. 222).
Unreasonable deprivations of liberty without due process of the laws.

Federal government under our constitution decides racial classifications, embodied, in a state criminal statutes in the context, where the court of common pleas of Philadelphia, Judge Jacqueline Allen, Judge Abraham Gafni, Judge Arnold New, Judge O'Keefe, Judge A.J. Bonavitacola, failed to secure equal protection under the laws, regarding punishment, penalties, licenses, (certification of Dr. Vincent Armenti specialty surgery license with Thomas Jefferson University Hospital.

This is secured by our constitutional laws under the 14th amendment
(see R.S. § 1977, 42 U.S.C. § 1981.)
The state must not denied equal protection of the laws. "Yick Wo v. Hopkins 118 U.S. 356, 118 U.S. 369.

The states must not deny interest in maintaining high professional standard U.S. Supreme Court in Re Griffiths 413 U.S. 722-729.
Cramer v. United States, 350 U.S., 339 (1958)
"lawyers are not and officer of the court".
18 U.S.C. § 401(2) empowers a court of the united states to punish as contempt "unlawful behavior" of a lawyer. Aiding and abetting credential lying of Dr. Vincent Armenti who cause the death of the decedent, Mr. Willie F. Smith, and eight other patients with Thomas Jefferson University Hospital.

Jurisdiction of the Federal Courts under the 14th

Amendment legislation was to afford a federal rights in federal courts, because by reason of prejudice, passion, neglect, intolerance, or otherwise, state laws might not enforce the claims of citizens, (Dr. Vincent Armenti, is a citizen in Marlton, New Jersey), who intentionally misrepresented himself as a vascular, heart, kidney transplant surgeon, and professor of surgery in Philadelphia County and the State of Pennsylvania.

Dr. Vincent Armenti claims to be founder of the National Transplantation Pregnancy Registry for human subjects research. He travel across state lines, with the knowledge that the Court of Common Pleas of Philadelphia, Judge Jacqueline Allen, relinquish jurisdiction and enforcement of citizen rights, privileges, and immunities guaranteed by the fourteenth amendment, will always be denied by the Courts of Common Pleas in Philadelphia. One must have knowledge of our federal laws and knowledge of the Constitutional rights of the people.

Misuse of power possessed by virtue of State laws.
United States v. Classic, 313 U.S. 229.
Screws v. United States, 325 U.S. 91 Pp 365 U.S. 183-187 18 U.S.C.§ 242, § 1979.

Imposes civil liability and dispenses with the requirement of showing "a specific intent to deprived a person of federal rights".
Williams v. United States, 341 U.S. 97.

As a result of the respondents intentional concealment of the facts of credential lying, by Dr. Vincent Armenti, fraud, forgery obstruction, aiding and abetting, which cause the death of the decedent Mr. Willie F. Smith and eight other patients with Thomas Jefferson University Hospital, and the untold death numbers under the guises of professor of surgery with Dr. Vincent Armenti, National Transplant

Pregnancy Registry for human subjects research which is solely under the authority by federal regulations.

The conflict is especially clear in this case because any recovery under state law would be predicated on the findings that Dr. Vincent Armenti was "unreasonably dangerous" to his patients, without a surgeon license, and his human research without informed consent with Thomas Jefferson University Hospital.
(see Buckman Co. v. Plaintiffs' legal Comm., 531 U.S. 341, 348(2001)

Federal law preempts state laws that conflict with federal law, including state laws that either "make it impossible" for private parties to comply with both state and federal laws.
(See: Hines v. Davidowitz, 312 U.S. 52, 67 (1941)
(See: Diana Levine v. Wyeth)

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April 12, 2007

VIA TELEFACSIMILE: (215) 686-3726

Honorable Arnold L. New
Court of Common Pleas
606 City Hall
Philadelphia, PA 19107

RE: Smith v. Armenti & Thomas Jefferson University Hospital CCP, Philadelphia CCP, January Term, 2005.
No: 4090
Voire Dire Date: 04/27/07

Dear Judge New

We are writing to confirm that the above case has settled after a Mediation before the Honorable Abraham J. Gafni

Respectfully Submitted
By:_____/s/_____
VAL PLEET WILSON

THE AMERICAN BOARD OF SURGERY
1617 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103-1847

April 30, 2008

Re: Dr. Vincent Thomas Armenti, MD

To Whom it May Concern:

Thank you for your recent inquiry to the American Board of Surgery (ABS) regarding the certification above named surgeon. The specific status of the surgeon with the ABS is listed below.

Please be advised that the American Board of Surgery does not use or condone the term "board eligible" and therefore can neither affirm nor deny such status.

Certified: Surgery	**Current Status: Certified**

Certified History – Certificate #034745

Status	**Occurrence**	**Duration**	**Start Date**	**End Date**
Expired	Initial	Time-Limited	08 Nov. 1989	01 July 2000
Active	Recertification	Time Limited	24 Oct. 1997	01 July 2010
Active	Recertification	Time Limited	03 Dec. 2007	01 July 2020

Please inform us immediately if your information differs from what we have supplied above. If you have any questions regarding this information, please contact the ABS office.

By:_____/s/_____
Frank R. Lewis Jr., M.D.
Executive Director

PENNSYLVANIA

Department of State

For questions about this website, please Click Here to send an E-Mail, or to contact your Board directly, Click Here.

Click the X at the upper right corner to close this window and return to the list of licensees.

Person Information

Name: VINCENT THOMAS ARMENTI

Address Information

Address (city, state, zipcode):

License Information

Type:	Graduate Medic Trainee	Secondary Type:		Member:	MT020035T
Profession:	Medicine	Status:	Inactive		
Issue Date:	7/1/1988	Expires:	6/30/1989	Last Reserved:	5/16/1989

Prerequisite Information

Licensee:	THOMAS JEFFERSON UNIVERSITY	Relationship:	Business Relationship	
Type:	Training Institution	Number:	HS000240L	Status: Active
Date of Association:		Date of Expiration:		

Discipline Action History

No disciplinary actions were found for this license.

The information above is considered primary source for verification of license credentials.

PENNSYLVANIA

Department of State

For questions about this website, please Click Here to send an E-Mail, or to contact your Board directly, Click Here.

Click the X at the upper right corner to close this window and return to the list of licensees.

Person Information

Name: VINCENT THOMAS ARMENTI

Address Information

Address (city, state, zipcode): MARLTON, NJ 08053

License Information

Type:	Medical Physician and Surgeon	Secondary Type:		Member:	MD041272E
Profession:	Medicine	Status:	Inactive		
Issue Date:	3/30/1988	Expires:	12/31/2008	Last Reserved:	12/21/2006

Discipline Action History

No disciplinary actions were found for this license.

The information above is considered primary source for verification of license credentials.

ALAN R. KOSLOW, M.D., F.A.C.S.

2716 Jordan Grove, West Des, Moines, LA 50265

Val Wilson
Wilson & Johnson
1 South Broad on the Avenue of the Arts
18th Floor
Philadelphia, Pennsylvania 19107

September 5, 2006

RE: Willie Frank Smith

Dear Mr. Wilson:

I want to thank you very much for asking me to review the records on Mr. Smith. I have reviewed the following:

- Medical records from Thomas Jefferson University Hospital
- Medical records from the Thomas Edison Intermediate Dialysis Unit
- Medical records of Dr. Armenti
- Medical records of Dr. Neff
- Medical Examiner's report and Death certificate
- Thomas Jefferson University Policies and Procedures, Policy 113.01 Discharge Planning, Effective 1/12/03
- Interrogatories to Dr. Vincent Armenti and his answers
- Interrogatories to Thomas Jefferson University Hospital and its answers

I am a boarded vascular surgeon, licensed to practice medicine in the states of California, Iowa and Indiana. I perform dialysis access surgery as a routine part of my surgical practice and have been doing so my entire surgical practice. I feel qualified to give opinions in this case.

The summary of the case is as follows. The patient was referred to Thomas Jefferson University Hospital and Dr. Vincent Armenti (the attending). Dr. Vincent Armenti evaluated the patient at the hospital on January 24, 2003

finding that "he has a pseudoaneurysm in the midportion of the this graft which may be enlarging... There us a fairly large pseudoaneurysm in the midportion of the graft with two very small enlargements closer to the arterial side just inferior to the larger pseudoaneurysm. If in fact, this pseudoaneurysm has been getting larger then it would be best to revise the graft, certainly before other complications ensure." (1/25/03 letter from Dr. Armenti to Dr. Michael) Dr. Armenti's plan was "to plan the revision, assuming there is medical clearance." Mr. Willie Frank Smith was scheduled for a right upper extremity arteriovenous fistula revision for 2/12/03. Dr. Armenti evaluated Mr. Smith in his office on 2/10/03 (See letter Dr. Armenti to Dr. Hoffman dated 2/10/03) "His pseudoaneurysm seems a little larger in size"... "He has...a large pseudoaneurysm in the midportion of the graft." Dr. Armenti's plan was the surgery: "Given the patient's age and difficulty getting from place to place, it seems best to proceed with hospitalization this week."

On 2/11/03 there was successful placement of an ASH-SPLIT tunneled dialysis catheter via the left internal juglar vein. Dr. Eschelman observed "Severe degeneration in the mid graft portion of this right upper arm dialysis graft. The report states "INDICATION: Hemodialysis access; preoperative evaluation for dialysis graft revision due to huge site of graft degeneration." This was brought to the attention of the attending: "Discussed with Dr. Armenti on 2/12/03, and with the surgery house officer at the time the procedure was performed, Angioplasty was not performed of the sevre venous anastomic stenosis, as the patient is undergoing dialysis graft revision on 2/12/03 on 2/12/30 9:10 a.m., Dr. Gaughan charted that "I saw and examined patient on dialysis with Dr. Fall (anesthesiologist). Patient is stable. No complaints. Will have outpatient cardiac eval prior to be operated on emergently.

Hospital policy states that "The physician is responsible for the assessment and treatment of patients under his/her care"... The physician is also responsible for discharging the patient form the, hospital and dictating a narrative

summary... Responsibilities of medical staff Dr. Armenti as the attending physician was the one who-made the decision to discharge the patient and he was also the person with ultimate responsibility for this decision.

Dr. Armenti deviated from the standard of care as follows:

1. There was no documented evidence of the hemodynamic problem in the right forearm dialysis access graft that led to the decision to modify or abandon it. This makes it difficult to assess the thought process used by the physician.

2. Dr. Armenti found a "fairly large pseudoaneurysm", documented on January 25, 2003 in his note, while he additionally documented on February 10, 2003 the pseudoaneurysm being "larger in size". This leads to an increased risk of rupture and increased urgency to repair the fistula. A failure to repair the fistula expeditiously at this time would to a high-degree of medical certainty lead to a high-risk of catastrophic rupture.

3. Angiogram performed on February 11, 2003, confirms the findings of Dr. Armenti on February 10, 2003. This was based on the printed report, however, I have not seen the actual films from the angiogram yet.

4. Dr. Armenti could have easily got a medical clearance on the afternoon of February 12 or the morning of February 13, while Mr. Smith was still hospitalized.

5. The standard of care demands that if a physician has a patient who requires an urgent medical procedure, and an expanding pseudoaneurysm falls into this category, then he and his staff have a duty to obtain this expeditiously and perform the surgery expeditiously to prevent a catastrophic occurrence as happened to Mr. Smith.

6. At the time of discharge from the hospital the patient should have been set up for medical clearance and surgery should have been rescheduled, but the patient was lost to follow-up by Dr. Armenti, which falls below the standard of care, and because of this ended up succumbing to an easily anticipated rupture of the pseudoaneurysm.

7. Dr. Armenti did not order or request the patient wear an Ace wrap bandage b around the arm while awaiting surgical repair which could of ameliorated the damage.

The above deviations from the standard of care caused or substantially increased the risk of harm of Mr. Smith's exsanguinations, suffering and death.

I hold all of the opinions stated in this report to at least a reasonable degree of medical certainty.

These are my opinions that I have reached in this case. I reserve the right, after getting any additional medical records, films or depositions that I do not have at this time, of modifying these opinions based on the additional data unavailable to me now. If there is anything further that I can answer with regards to any of these issues, please do not hesitate to contact me.

Sincerely yours,

By:_____/s/_____
Alan Koslow, M.D., FACS
Vascular Surgeon
AK/lah

Law Offices of
Wilson & Johnson
Val Pleet Wilson

One South Broad on the Avenue of the Arts
One South Broad Street
Philadelphia, PA 19107

March 26, 2007

Fredric Goldfein, Esquire
Goldfein & Joseph
1600 Market Street – 33rd Floor
Philadelphia, PA 19103

Marcy B. Tanker, Esquire
McCann & Geschke, P.C.
1800 JFK Blvd., Suite 801
Philadelphia, PA 19103

Re: Smith v. Thomas Jefferson University Hospital Et al and PDI

Philadelphia CCP, January Term, 2005, No: 4090-DEPOSITIONS

Dear Counsel:

We have enclosed the following items that were just found by Mr. Smith's daughters:

1. Social security card signed by Willie Frank Smith
2. Voter Registration card signed by Willie Frank Smith
3. Free Library card signed by Willie Frank Smith

As you can see, these signatures are completely different from the purported signature of Willie Frank Smith at discharge.

Sincerely,
By:_____/s/_____
Val Pleet Wilson

VPW/kz

WILSON & JOHNSON

Val Pleet Wilson

One South Broad on the Avenue of the Arts
One South Broad Street
Philadelphia, PA 19107

March 26, 2007

Patricia Smith, Esquire
8219 Thouron Avenue
Philadelphia, PA 19150

Mary Scott
1152 E. Philellena Street
Philadelphia, PA 19150

Christine Smith
1004 Laings Avenue
Bristol, PA 19007

Re: Trial

Dear Ms. Smith and Ms. Scott:

As you know jury selection is scheduled for Friday, April 27, 2007 with the trial starting Monday April 30, 2007. It is my hope that each of you can attend the jury selection and trial if the case does not settle before that day.

If any of you have any questions, comments, etc., do not hesitate to contact me.

Sincerely,
By_____/s/_____
Val Pleet Wilson

VPW/kz

Wilson & Johnson
Val Pleet Wilson

One South Broad on the Avenue of the Arts
One South Broad Street
Philadelphia, PA 19107

April 5, 2007

Patricia Smith
8219 Thouron Avenue
Philadelphia, PA 19150

Mary Scott
1152 E. Philellena Street
Philadelphia, PA 19150

Christine Smith
1004 Laings Avenue
Bristol, PA 19007
Re: Mediation-4/12/07 9:00 a.m.

Re: Mediation-4/12/07 9:00 a.m.

Dear Ms. Smith and Ms. Scott:

The mediation for 4/12/07 at 9:00 a.m. is now confirmed. Lets meet at my office for breakfast at 7:45 a.m.

If any of you have any questions, do not hesitate to contact me.

Sincerely,
By:_____/s/_____
Val Pleet Wilson

VPW/kz

REASONS FOR GRANTING THE PETITION

The United States Constitution Article 111 vests appellate court jurisdiction in the supreme court, while 28 U.S.C.A §§ 1291 - 1295 grants appellate jurisdiction to Lower Federal Courts of Appeal.

Federal courts must determine that the state courts judgement was erroneously entered or must take action that would render that judgement ineffectual. Ernst, 108F. 3d at 491; focus, 75F. 3d at 840.

The Rooker-Feldman doctrine is based on the statutory provision that grants the supreme court jurisdiction to review the decisions of the state courts for compliance with the constitution.

The appellees Dr. Vincent Armenti with Thomas Jefferson University hospital fail to adhere to the laws that govern medical and legal professionals in the United States, with credential lying, fraud, obstruction, aiding and abetting, forgery that cause the death of the decedent Mr. Willie F. Smith and eight other patients with Thomas Jefferson University Hospital. Dr. Vincent Armenti and Thomas Jefferson University secured and illegal standing in Philadelphia County, Pennsylvania, causing death, injury and harm not only to citizens in Philadelphia County, Pennsylvania, but throughout the United States since 1991 for profit. They illegally secured a standing without disclosure to obtain federal, state grants, causing death, injury and harm by lying to citizens of the United States.

Dr. Vincent Armenti intentionally misrepresented, exaggerated experience and qualifications significantly increasing the risk of judgement, procedures, death, to his patients at Thomas Jefferson University Hospital and medical consumers seeking treatment without disclosure, and by misinformation presented on consent forms, which are not considered a legal consent. The State of Pennsylvania and New Jersey confirmed on there state licensure

information that Dr. Vincent Armenti received his general surgery certification after 2006 as a citizen in Marlton, New Jersey after the death of the decedent Mr.

Willie F. Smith and eight other patient death cited in the Court of Common Pleas in Philadelphia County with Thomas Jefferson University Hospital.

A conflict of interest have arisen under the state of Pennsylvania MCARE (Medical Care Availability and Reduction of Errors) Act, regarding United States Constitutional Laws, Medical Malpractice Laws and Procedures, with all Pennsylvania citizen failure to receive medical insurance, with the removal of all tax-payer dollars to pay medical malpractice insurance judgement since 2002, established under the patient Safety Authority Act 13 of 2002.

The MCARE Act established new procedure to eliminate patient safety authority, limit time period to provide Certificate of Merit, (See medical examiner autopsy report for the decedent Mr. Willie F. Smith, death certificate do not warrant a Certificate of Merit, see death certificate of decedent Mr. Willie F. Smith), which is a violation of the Constitution 14th Amendment, and Federal Laws.

U.S. CONSTITUTION

AMENDMENT XIV (1868)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities or citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...

CONCLUSION

The highest level of financial & legal penalties are warranted against the respondents, attorneys for the respondents, to include attorney Val Pleet Wilson, with the appeal of an unconstitutional, fraudulent, non-existent meditation settlement enforced by Common Pleas Court Judge Jacqueline Allen, in the amount of $105,000, which is unfair and unreasonable, without a jury trial, without a jury trial waiver, with the intentional concealment of the truth, of fraud, credential lying of Dr. Vincent Armenti, fraud, forgery and obstruction by the respondents, to include Attorney Val Pleet Wilson, in sending a clear message, enforcement of a fair and honest medical malpractice, wrongful death, obstruction, forgery and fraud cases against the appellee/respondents, to include Attorney Val Pleet Wilson, Judgement of eighty million dollars in favor of the appellant/petitioners, Patricia Smith, Mary Scott, Christine Smith, to bring forth an ending, with all legal and court costs and taxes paid by the appellee/ respondents, all medical witness fees paid by the appellee/respondents, with no appeals granted to the appellee/respondents, attorneys for the appellee/respondents, to include Attorney Val Pleet Wilson.

Enforce by our Laws under the United States Constitution

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

/s/ MARY SCOTT, PRO SE

/s/ CHRISTINE SMITH, PRO SE

/s/ PATRICIA SMITH, PRO SE

PATRICIA SMITH, Administratrix of the Estate of Willie Frank Smith, deceased and Patricia Smith and Mary Scott and Christine Smith,

v.

Thomas Jefferson University Hospital; Thomas Jefferson University Hospital, Inc.; Jefferson Medical College; Vincent Armenti, M.D.; Andrea Clark, RN; Ryan Neff, M.D. and/or Bryan Neff, M.D.; Physicians Dialysis, Inc. or Intermediate Dialysis Unit; Beckie Michael, D.O.; and Brenda Hoffman, M.D.

COURT OF COMMON PLEAS PHILADELPHIA COUNTY

JANUARY TERM, 2005

031925

NO. 4090

ORDER

AND NOW, this 28th day of May, 2008, it is hereby ORDERED and DECREED that Defendants' Motion to Enforce Settlement is GRANTED, and

1. The Settlement reached at the Mediation of $105,000.00 is enforced;

2. The Settlement reached at the Mediation is fair and reasonable;

3. Plaintiffs, through counsel, shall file a Motion for Approval of Settlement in a Wrongful Death and Survival Action in Orphans Court.

BY THE COURT:

/S/ ALLEN, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PATRICIA SMITH E/O **WILLIE F. SMITH PATRICIA** **SMITH** **MARY SCOTT, CHRISTINE SMITH** **v.** **THOMAS JEFFERSON UNIV.** **HOSPITAL** **JEFFERSON MEDICAL COLLEGE** **VINCENT ARMENTI, M.D.** **ANDREA CLARK, R.N.** **BECKIE MICHAEL, D.O.** **BRENDA HOFFMAN, M.D.** **ATTORNEY MARCY TANKER** **ROBERT A. JUBELIRER, M.D.** **ATTORNEY VAL PLEET WILSON** **ATTORNEY FREDRIC GOLDFEIN**	**CIVIL** **ACTION** **NO. 08-2478**

ORDER

AND NOW, this 11th day of June, 2008, it appearing that:

1. Plaintiffs have filed this action *pro se* and paid a filing fee.

2. This action appears to be an appeal from an order in the Court of Common Pleas of Philadelphia County, January Term, 2005, No. 4090.

3. The defendants in that action filed a motion to enforce a medicated settlement which was granted by Court of Common Pleas Judge Jacqueline F. Allen by Order of May 28, 2008.

4. In her Order of May 28, 2008, Judge Allen granted defendants' motion, found that the mediated settlement was fair and reasonable, and directed that the plaintiffs, through their counsel, "file a Motion for Approval of Settlement in a Wrongful Death and Survival Action in Orphans Court."

5. No basis for federal jurisdiction appears on the face of the Complaint as there is no diversity of citizenship between the parties and no alleged violation of any federal statue or the United States Constitution.

6. This court has no jurisdiction to review a decision of a state court under the Rocker-Feldman doctrine; the appeal of a Common Pleas decision has to be taken to a Pennsylvania Appellate Court.

THEREFORE, it is **ORDERED** that:

1. The court will hold a hearing on a Rule to Show Cause why this matter should not be dismissed for lack of jurisdiction on Monday, June 23, 2008, at 11:00am., Courtroom 10-A, 601 Market Street, Philadelphia.

/s/ Norma L. Shapiro
S.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PATRICIA SMITH E/O WILLIE F. SMITH PATRICIA SMITH **MARY SCOTT, CHRISTINE SMITH** **v.** **THOMAS JEFFERSON UNIV. HOSPITAL** **JEFFERSON MEDICAL COLLEGE** **VINCENT ARMENTI, M.D.** **ANDREA CLARK, R.N.** **BECKIE MICHAEL, D.O.** **BRENDA HOFFMAN, M.D.** **ATTORNEY MARCY TANKER** **ROBERT A. JUBELIRER, M.D.** **ATTORNEY VAL PLEET WILSON** **ATTORNEY FREDRIC GOLDFEIN**	**CIVIL ACTION** **NO. 08-2478**

ORDER

AND NOW, this 3rd day of July, 2008, after a rule to show cause hearing on June 23, 2008 at which the plaintiffs and counsel for the defendants were heard, it appearing that:

1. Plaintiffs have filed this action *pro se* and paid a filing fee.

2. This action appears to be an appeal from an order in the Court of Common Pleas of Philadelphia County, January Term, 2005, No. 4090.

3. The defendants in that action filed a motion to enforce a mediated settlement.

4. In her Order of May 28, 2008, Common Pleas Judge Jacqueline Allen granted defendants' motion, found that the mediated settlement was fair and

reasonable, and directed that plaintiffs, through their counsel, "file a Motion for Approval of Settlement in a Wrongful Death and Survival Action in Orphans Court."

5. This court held a rule to show cause hearing on June 23, 2008 on why this action should not be dismissed for lack of subject matter jurisdiction. No basis for federal jurisdiction appears on the face of the Complaint as there is no diversity of Citizenship between the parties and no alleged violation of any federal statute or the United States Constitution. Plaintiffs offered no valid basis for jurisdiction at the hearing.

6. This court has no jurisdiction to review a decision of a state court under the Rooker-Feldman doctrine; the appeal of a Common Pleas decision has to be taken to a Pennsylvania Appellate Court.

THEREFORE, it is **ORDERED** that this action is **DISMISSED** for lack of subject matter jurisdiction. The Clerk of Court is directed to mark this action **CLOSED**.

/s/ Norma L. Shapiro
S.J.

APPENDIX D

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-3238

PATRICIA SMITH, E/O Willie F. Smith; PATRICIA SMITH; MARY SCOTT; CHRISTINE SMITH, Appellants

v.

THOMAS JEFFERSON UNIVERSITY HOSPITAL; JEFFERSON MEDICAL COLLEGE; VINCENT ARMENTI, M.D.;
ANDREA CLARK, R.N.; BECKIE MICHAEL, D.O.; BRENDA HOFFMAN, M.D., Intermediate Dialysis Unit; ATTORNEY MARCY
B. TANKER; ROBERT A. JUBELIRER, M.D.; ATTORNEY VAL PLEET
WILSON; ATTORNEY FREDRIC L. GOLDFEIN,

(Pursuant to F.R.A.P. 12(a))

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 08-cv-02478)
District Judge: Honorable Norma L. Shapiro

Submitted Pursuant to Third Circuit LAR 34.1 (a)
February 10, 2009

Before: FISHER, JORDAN and VAN ANTWERPEN, Circuit Judges.

(Filed: February 11, 2009)

OPINION

PER CURIAM

Mary Scott, Christine Smith, and Patricia Smith (together, the "Smiths") appeal from the District Court's order dismissing their complaint for lack of subject matter jurisdiction. For the following reasons, we will affirm.

This matter arises from a medical malpractice action currently pending in the Philadelphia County Court of Common Pleas. In February 2005, the Smiths initiated that action against Thomas Jefferson University Hospital, Jefferson Medical College, and several medical professionals in connection with the death of their father, Willie F. Smith. (Jan. Term, 2005, No. 4090.) The Smiths and their attorney, Val Pleet Wilson, subsequently agreed to resolve the dispute by participating in a binding arbitration. Following the arbitration on April 12, 2007, the parties settled the case for $105,000.00.

It appears, however, that the Smiths then refused to execute a release to finalize the settlement. The Smiths claimed that Attorney Wilson had failed to adequately represent their interests at the arbitration, and that, after the arbitration, they had learned that the doctor who performed their father's surgery was not board-certified as a surgeon. Despite the Smith's complaints, the Court of Common Pleas enforced the agreement and instructed the Smiths to comply with its terms.

Apparently dissatisfied with the stat court's ruling, the Smiths then filed the present pro se complaint in the United States District Court for the Eastern District of Pennsylvania. The complaint named as defendants the same parties from the state court action as well as the attorneys who had participated into the arbitration. In the complaint, the Smiths again alleged that the doctor who performed their father's surgery was not board- certified as a surgeon. The Smiths further alleged that one of the medical experts at the arbitration lacked sufficient credentials, and that their father's hospital discharge papers had been forged. Lastly,

the Smiths claimed that Attorney Wilson, by agreeing to the settlement, had conspired with the defense to cover up the defendants' malpractice.

All defendants moved to dismiss the complaint for lack of subject matter jurisdiction. See FED. R. CIV. P. 12(b)(1). Following a hearing on June 23, 2008, the District Court determined that the Smiths' complaint was an improper attempt to appeal from the state court's decision to enforce the settlement agreement, and held that it lacked jurisdiction to review that decision under the Rooker-Feldman doctrine. The District Court further held that the complaint did not allege any basis for federal question or diversity jurisdiction. Therefore, by order entered July 7, 2008, the District Court granted the defendants' motion to dismiss for lack of subject matter jurisdiction. This appeal followed[1].

Upon review, we believe that the District Court correctly concluded that it lacked jurisdiction over the Smiths' complaint. First, insofar as the Smiths' complaint sought review of the state court's ruling on the settlement agreement, the District Court properly held that it falls squarely within the class of actions prohibited by the Rooker-Feldman doctrine. See Desi's Pizza, Inc. v. City of Wilkes Barre, 321 F. 3d 411, 419 (3d Cir. 2003) (explaining that, pursuant to the Rooker-Feldman doctrine, district courts lack jurisdiction to adjudicate actions in which the relief requested requires the court to determine that the state court's decision was wrong). Furthermore, the District Court could not entertain federal question jurisdiction over the complaint because it did not allege any violations of a federal statute or the Constitution[2]. See 28 U.S.C. § 1331. Finally, as the District Court noted, jurisdiction could not be based on diversity of citizenship between the parties because the parties in this action are all citizens of the Commonwealth of Pennsylvania. See 28 U.S.C. § 1332. Therefore, the district Court correctly concluded that it lacked subject matter jurisdiction over the complaint.

---

[1]We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291, and our review of the District Court's dismissal for lack of subject matter jurisdiction is plenary. Gary v. Braddock Cemetary, 517 F.3d 195, 200 n. 4 (3d Cir. 2008); Ballentine v. United States, 486 F.3d 806, 808 (3 Cir. 2007).

We have reviewed the Smiths' remaining arguments, and have concluded that they are without merit[3]. Accordingly, for reasons set forth above, we will affirm the judgment of the District Court.

---

[2]In their Notice of Appeal and their brief, the Smiths make several allegations about minority discrimination in the state's legal system. We need not address these allegations, however, because they were not raised before the District Court. See Brenner v. Local 514, United Bhd. of Carpenters and Joiners of Am., 927 F. 2d 1283, 1298(3d Cir. 1991).

[3]The Smiths' "Motion to Admit Genuineness of Facts," in which they ask the defendants to admit or deny the truth of 13 statements, is denied. The Federal Rules of Appellate Procedure do not provide for requests for admissions in matters on appeal to this Court; a court of appeals reviews a district court's judgment based on the record before the district court.

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-3238

PATRICIA SMITH, E/O Willie F. Smith; PATRICIA SMITH; MARY SCOTT; CHRISTINE SMITH,

Appellants

v.

THOMAS JEFFERSON UNIVERSITY HOSPITAL; JEFFERSON MEDICAL COLLEGE; VINCENT ARMENTI, M.D.;
ANDREA CLARK, R.N.; BECKIE MICHAEL, D.O.; BRENDA HOFFMAN, M.D., Intermediate Dialysis Unit; ATTORNEY MARCY B. TANKER; ROBERT A. JUBELIRER, MD; ATTORNEY VAL PLEET
WILSON; ATTORNEY FREDRIC L. GOLDFEIN,

(Pursuant to F.R.A.P. 12(a))

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 08-cv-02478)
District Judge: Honorable Norma L. Shapiro

Submitted Pursuant to Third Circuit LAR 34.1 (a)
February 10, 2009

Before: FISHER, JORDAN and VAN ANTWERPEN,
Circuit Judges.

JUDGEMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on February 10, 2009. On consideration whereof, it is not hereby

ORDERED and ADJUDGED by this Court that the judgement of the District Court entered July 7, 2008, be and the same is hereby affirmed. Costs taxed against the Appellants. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ Marcia M. Waldron
Clerk

DATED: February 11, 2009

APPENDIX E-2

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-3238

PATRICIA SMITH, E/O Willie F. Smith; PATRICIA SMITH; MARY SCOTT; CHRISTINE SMITH,
Appellants
v.

THOMAS JEFFERSON UNIVERSITY HOSPITAL; JEFFERSON MEDICAL COLLEGE; VINCENT ARMENTI, M.D.;
ANDREA CLARK, R.N.; BECKIE MICHAEL, D.O.; BRENDA HOFFMAN, M.D., Intermediate Dialysis Unit; ATTORNEY
MARCY B. TANKER; ROBERT A. JUBELIRER, MD; ATTORNEY VAL PLEET WILSON; ATTORNEY FREDRIC L. GOLDFEIN,

(Pursuant to F.R.A.P. 12(a))

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 08-cv-02478)
District Judge: Honorable Norma L. Shapiro

Present: SCIRICA, Chief Judge, SLOVITER, McKEE, RENDELL,
BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES,
JORDAN, HARDMAN and VAN ANTWERPEN,* *Circuit Judges.*

SUR PETITION FOR RHEARING
WITH SUGGESTION FOR REHEARING EN BANC

*Judge Van Antwerpen's vote is limited to panel rehearing only.

The petition for rehearing filed by Appellants having been submitted to all judges who participated in the decision of this court, and to all the other available circuit judges in active service, and a majority of the judges who concurred in the decision not having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is hereby DENIED.

BY THE COURT:

/s/ D. Michael Fisher
Circuit Judge

Dated: March 5, 2009
tyc/cc: Ms. Patricia Smith
Ms. Mary Scott
Richard E. Geschke, Jr., Esq.
Marcy B. Tanker, Esq.
Candidus K. Dougherty, Esq.
Jeffrey B. McCarron, Esq.
Deborah M. Knight, Esq.
Ms. Christine Smith

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(2)

No. 09-101

Supreme Court, U.S.
FILED
AUG 20 2009
OFFICE OF THE CLERK

In The Supreme Court of the United States

PATRICIA SMITH, E/O WILLIE F. SMITH; PATRICIA SMITH; MARY SCOTT and CHRISTINE SMITH,

Petitioners,

vs.

THOMAS JEFFERSON UNIVERSITY HOSPITAL; JEFFERSON MEDICAL COLLEGE; VINCENT ARMENTI, M.D.; ANDREA CLARK, R.N.; BECKIE MICHAEL, D.O.; BRENDA HOFFMAN, M.D.; INTERMEDIATE DIALYSIS UNIT; ATTORNEY MARCY TANKER; ROBERT A. JUBELIRER, M.D.; ATTORNEY VAL PLEET WILSON and ATTORNEY FREDERIC GOLDFEIN,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

JOINT BRIEF IN OPPOSITION

MARCY B. TANKER
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Attorneys for Respondents Jefferson Medical College, Vincent Armenti, M.D., Robert Jubelirer, M.D., Beckie Michael, D.O., Intermediate Dialysis Unit, Attorney Frederic Goldfein

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Did the United States Court of Appeals for the Third Circuit properly apply well-settled law when it affirmed the judgment of the District Court which dismissed Petitioners' complaint for lack of subject matter jurisdiction where the complaint did not invoke federal question jurisdiction, there was not complete diversity of citizenship among the parties and no violation of any federal statute or the United States Constitution was alleged?

CORPORATE DISCLOSURE STATEMENT

Thomas Jefferson University Hospital and Thomas Jefferson University Hospital, Inc., do not have any parent corporation and publicly held corporation that owns 10% or more of their stock.

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JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to 28 U.S.C. §1254 because this Petition for Writ of Certiorari seeks review of the February 11, 2009 decision of the Court of Appeals for the Third Circuit affirming the judgment of the United States District Court for the Eastern District of Pennsylvania. By Order dated March 5, 2009, the Court of Appeals denied Petitioners' Petition for Rehearing. The Petition for Writ of Certiorari was placed on the docket on July 27, 2009.

STATUTES INVOLVED

28 U.S.C. §1331: Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. §1332: Diversity of Citizenship, amount in controversy, costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest or costs and is between –

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in Section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

28 U.S.C. §455: Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policy-holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

STATEMENT OF THE CASE

This matter comes before this Court on appeal from the decision of the United States Court of Appeals for the Third Circuit ("Third Circuit"), affirming the July 3, 2008 Order of the United States District Court for the Eastern District of Pennsylvania ("District Court") holding that it had no jurisdiction over this action pursuant to 28 U.S.C. §1331 (relating to federal question jurisdiction) and 28 U.S.C. §1332 (relating to diversity of citizenship) or pursuant to the *Rooker-Feldman* doctrine.

A. The State Court Action

On February 1, 2005, Petitioners filed a Complaint in the Court of Common Pleas of Philadelphia County alleging that medical negligence on the part of various health care providers caused the death of their father, Mr. Willie F. Smith ("State Court Action") which occurred in February, 2003. By agreement of the parties, a mediation was held on April 12, 2007 before the (Ret.) Honorable Abraham Gafni during which the parties agreed upon a settlement in the amount of $105,000.

Thereafter, Petitioners refused to execute a Release to consummate the settlement and Respondents/Defendants filed a Motion to Enforce the Settlement Agreement. The Motion to Enforce the Settlement was granted, after hearing, on May 28, 2008 by Philadelphia Court of Common Pleas Judge Jacqueline

Allen. (See Order dated May 28, 2008, Appendix A to Petition for Writ of Certiorari.)

B. The Federal Court Action

After Judge Allen granted the Motion to Enforce the Settlement Agreement in the State Court action on May 28, 2008, Respondents filed a Complaint in the United States District Court for the Eastern District of Pennsylvania alleging medical malpractice in connection with the death of Willie Smith, lack of license and board certification of a defendant physician, insufficient credentials and experience of a defense expert, forgery of their father's signature on a discharge summary and "fraud" and "obstruction" on the part of all counsel.

Motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) were filed. On June 12, 2008, the District Court issued an Order scheduling a hearing for June 23, 2008 on its rule to show cause why the matter should not be dismissed for lack of jurisdiction.

After the show cause hearing, the District Court issued its July 3, 2008 Order, noting that "[t]his action appears to be an appeal from an order in the Court of Common Pleas of Philadelphia County, January Term, 2005, No. 4090." (See July 3, 2008 Order, at ¶ 2, Appendix C, C-1 to Petition for Writ of Certiorari.) The District Court noted that in the State Court Action, Judge Jacqueline Allen had granted the motion to enforce a fair and reasonable mediated

settlement. (*Id.* at ¶¶ 3-4.) The District Court's Order further noted that "[n]o basis for federal jurisdiction appears on the face of the Complaint as there is no diversity of citizenship between the parties and no alleged violation of any federal statute or the United States Constitution" (*Id.* at ¶ 5.) and that at the June 23, 2008 hearing, despite being given the opportunity to demonstrate a basis for federal jurisdiction, "Plaintiffs offered no valid basis for jurisdiction." (*Id.*) Finally, the District Court noted that it "has no jurisdiction to review a decision of a state court under the *Rooker-Feldman* doctrine; the appeal of a Common Pleas decision has to be taken to a Pennsylvania Appellate Court." (*Id.* at ¶ 6.)

Petitioners appealed the Order of the District Court to the United States Court of Appeals for the Third Circuit. In its Opinion, dated February 11, 2009, the Court of Appeals affirmed the judgment of the District Court, agreeing that the *Rooker-Feldman* doctrine prohibited review by a federal court of the state court's ruling on the settlement agreement. (See Opinion dated February 11, 2009, Appendix D-2 to Petition for Writ of Certiorari.) The Opinion also concluded that there was no federal question jurisdiction because the complaint did not allege any violation of any federal statute or the United States Constitution and, finally, that there was no jurisdiction based upon diversity of citizenship because all parties are citizens of Pennsylvania. (*Id.*) Thereafter, Petitioners filed a Petition for Rehearing, which was denied by the Court of Appeals on March 5, 2009.

(See Order dated March 5, 2009, Appendix E-2, E-3 to Petition for Writ of Certiorari.)

The instant Petition for Writ of Certiorari was filed in the Supreme Court of the United States on April 13, 2009 and was placed on the docket on July 27, 2009.

ARGUMENTS FOR DENYING THE WRIT OF CERTIORARI

There are no compelling reasons which support the grant of the Petition for Writ of Certiorari in this matter. The Third Circuit's decision in this case is not in conflict with the decision of another Court of Appeals and does not represent any departure from the accepted and usual course of judicial proceedings. Indeed, the decision represents conformity with long-standing principles and precedent. Moreover, the decision in this case does not involve a conflict between courts in the resolution of an important federal question nor does it involve a conflict between courts on an important question of federal law.

From its inception, Petitioners' action in Federal Court has been an attempt to reverse the State Court's decision to enforce a mediated settlement of a medical malpractice claim. This attempt to appeal a State Court decision to the District Court was properly recognized as impermissible under the *Rooker-Feldman* doctrine. The District Court correctly held that it lacked subject matter jurisdiction. The

complaint raised no federal question in that it did not allege any violation of a federal statute or the United States Constitution. Rather, Petitioners' claims and issues are premised on state law relating to torts, medical practice and medical malpractice. There was no diversity of citizenship as all parties are citizens of Pennsylvania. The judgments of the District Court and the Court of Appeals were correct.

A. There Are No Compelling Reasons For Granting The Petition For Writ Of Certiorari.

"Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." Supreme Court Rule 10.

In this case, Petitioners seek review of a state court Order enforcing a mediated settlement of a medical malpractice action. The District Court and the Court of Appeals determined that the federal courts have no jurisdiction in this matter. Those determinations are not in conflict with a decision of another Court of Appeals and do not represent any departure from the accepted and usual course of judicial proceedings. Indeed, the decisions represent conformity with long-standing principles and precedents pertaining to jurisdiction. Moreover, the decisions in this case do not involve a conflict between courts in the resolution of an important federal question nor do they involve a conflict between courts on an important question of federal law.

This case simply does not present any compelling reason for the granting of a Writ of Certiorari and the Petition should be denied.

B. The Decisions Of The District Court And Court Of Appeals Are Correct.

The burden of establishing subject matter jurisdiction rested with the Petitioners (Plaintiffs in the District Court). Plaintiffs' Complaint contained no "statement of the grounds upon which the court's jurisdiction depends" as required by Rule 8 of the Federal Rules of Civil Procedure. While it is recognized that the pleadings of a *pro se* plaintiff should be liberally construed, it is still the burden of the *pro se* plaintiff to establish subject matter jurisdiction. *See, e.g., Jiricko v. Bennett, Bricklin & Saltzburg, LLP*, 3321 F. Supp. 636, 639 (E.D. Pa. 2004). In this case, Plaintiffs' Complaint did not cite any specific provision of the U.S. Constitution, federal statutes or federal regulations and referenced no violation of a federally protected right that could be said to "create" a cause of action against the defendants. This failure alone supported the District Court's decision to dismiss the action for lack of subject matter jurisdiction.

The Complaint filed by Petitioners alleged medical malpractice in connection with the death of Willie Smith, lack of license and board certification of a defendant physician, insufficient credentials and experience of a defense expert, forgery of their

father's signature on a discharge summary and "fraud" and "obstruction" on the part of all counsel. These claims and issues are governed by state law. *See, e.g., Toogood v. Rogal*, 573 Pa. 245, 824 A.2d 1140 (2003) (providing lengthy discussion of the law of Pennsylvania concerning medical negligence); Medical Practice Act of 1985, 63 P.S. §422.1-422.45 (governing licensing of physicians and the practice of medicine); 40 P.S. §1303.512 (governing expert witness qualifications in medical malpractice actions); *Overall v. Univ. of Pennsylvania*, 412 F.3d 492, 498 (3d Cir. 2005) (setting forth the elements of fraudulent misrepresentation under Pennsylvania law as set forth in *Gibbs v. Ermst*, 538 Pa. 193, 647 A.2d 882, 889 (Pa. 1994)). The Complaint utterly failed to allege any facts supporting a finding of federal question jurisdiction.[1,2]

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[1] The Petition's Questions Presented, numbers 1 to 4, are related to Petitioners' efforts to avoid the settlement of the State Court Action which was based on state law.

[2] Petitioners asserted that their right to a jury trial was violated by their attorney entering into an allegedly unauthorized settlement and they continue to raise that issue in the Petition for a Writ of Certiorari. (See question for review # 2, namely "Are [sic] mediation settlement legal or equitable without a Jury Trial Waiver, with major medical malpractice cases?") That issue does not change the status of Petitioners' claims which are premised on their dissatisfaction with the state court Order enforcing the settlement agreement. Thus, the claim as to violation of the right to a jury trial is really nothing more than an attack on the enforced settlement, dressed up in constitutional verbiage.

The Order of the District Court correctly states that "No basis for federal jurisdiction appears on the face of the Complaint as there is no diversity of Citizenship between the parties and no alleged violation of any federal statute or the United States Constitution. Plaintiffs offered no valid basis for jurisdiction at the hearing" and "This court has no jurisdiction to review a decision of a state court under the *Rooker-Feldman* doctrine; the appeal of a Common Pleas decision has to be taken to a Pennsylvania Appellate Court." (See July 3, 2008 Order, Appendix C-1 to Petition for Writ of Certiorari.) [3]

The District Court Order follows Supreme Court precedent. *See, Exxon Mobil Corp. v. Saudi Basis Industries Corp.*, 544 U.S. 280, 125 S. Ct. 1517, 161 L. Ed. 2d 44 (2005) (holding that where the claim being asserted in a federal court proceeding is one in which the plaintiff is seeking to overturn a state court judgment entered by a state court with jurisdiction, there is no federal subject matter jurisdiction).

The Court of Appeals examined the jurisdictional issues stating that "insofar as the Smiths' complaint sought review of the state court's ruling on the settlement agreement, the District Court properly

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[3] The only other possible basis for invoking the jurisdiction of the District Court was based on diversity of citizenship with an amount in controversy greater than $75,000, pursuant to 28 U.S.C. §1332. However, there was no dispute that the parties were citizens of the Commonwealth of Pennsylvania and thus, jurisdiction pursuant to 28 U.S.C. §1332 does not exist.

held that it falls squarely within the class of actions prohibited by the *Rooker-Feldman* doctrine."[4] (See Opinion dated February 11, 2009, Appendix D-2 to Petition for Writ of Certiorari.) Addressing federal question and diversity jurisdiction, the Court of Appeals stated: "the District Court could not entertain federal question jurisdiction over the complaint because it did not allege any violations of a federal statute or the Constitution" and "as the District Court noted, jurisdiction could not be based on diversity of citizenship between the parties because the parties in this action are all citizens of the Commonwealth of Pennsylvania." The Third Circuit concluded that the District Court "correctly concluded that it lacked subject matter jurisdiction over the complaint." (*Id.*)

In addition to reiterating their claims in the District Court, in their brief filed in support of the appeal to the Court of Appeals, Petitioners raised, for the first time, allegations relating to minority status

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[4] The Court of Appeals Order referred to the mediation as a "binding arbitration." The reference to "binding arbitration" appears to form the basis of Petitioner's question for review #5, namely "Are [sic] Philadelphia [sic] Court of Appeals, allowed to change the court order listing a non-binding mediation to an arbitration?" However, despite this incorrect reference, the Court of Appeals correctly noted that "Smiths' [District Court] complaint sought review of the state court's ruling on the settlement agreement." The semantic slip of referring to a "mediation" as a "binding arbitration," in the context of this case, does not indicate an error by the Court of Appeals and does not provide any basis for granting the writ of certiorari.

and race. The Court of Appeals noted that it would not address these allegations because they were not raised before the District Court, citing *Brenner v. Local 514, United Bhd. of Carpenters & Joiners of Am.*, 927 F.2d 1283, 1298 (3d Cir. 1991). For the same reasons, Petitioners' attempt to inject issues of minority status and race into the case at this present stage is similarly waived.

Accordingly, the Third Circuit properly affirmed the District Court's Order.

C. Questions Pertaining To Recusal Of Court Of Appeals Judges D. Michael Fisher And Marjorie O. Rendell Are Not Properly Raised For The First Time In The U.S. Supreme Court.

Petitioners include in their questions for review, three questions pertaining to whether Court of Appeals Judges D. Michael Fisher and Marjorie O. Rendell should have recused themselves from consideration of the appeal and Petition for Rehearing.[5] There is nothing in the record of this matter supporting Petitioners' claims of bias requiring recusal and it is clear that the issue of recusal was never raised in the Court of Appeals. A party seeking the disqualification of a judge is required to raise the claim at

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[5] Judge Fisher participated in the decision of the Court of Appeals and Judge Rendell participated in the vote denying the Petition for Rehearing.

the earliest possible moment after obtaining knowledge of facts demonstrating a basis for such claim. *Summers v. Singletary,* 119 F.3d 917 (11th Cir. 1997), *cert. denied,* 523 U.S. 1005, 118 S. Ct. 1188, 140 L. Ed. 2d 318 (1998).

Petitioners offer no explanation for their failure to raise the issue in the Court of Appeals and the attempt to raise the claim at this point is untimely.

Nevertheless, should this Court find that consideration of the recusal questions is required in this case to "promote the ends of justice" (*Hormel v. Helvering,* 312 U.S. 552, 557, 61 S. Ct. 719, 85 L. Ed. 1037 (1941)), Respondents offer a brief response.

In evaluating a question of recusal, 28 U.S.C. §455(b) provides specific circumstances in which a judge should disqualify himself. None of these circumstances are asserted by Petitioners to be present in this case and, in fact, none are present.

28 U.S.C. §455(a) provides that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." "The test for recusal under §455(a) is whether a reasonable person, with knowledge of all the facts, would conclude that the judge's impartiality might reasonably be questioned." *In re Kensington Intl. Ltd.,* 353 F.3d 211, 220 (3d Cir. 2003).

In question for review #6, Petitioners suggest that Judge Fisher should have recused himself because, as the Attorney General of Pennsylvania in

1996, his duties required him to investigate "fraud and credential lying and the National Transplantation Pregnancy Registry." It is hard to imagine how any duties that Judge Fisher had as the Attorney General of Pennsylvania in 1996 would cause a reasonable person to conclude that his impartiality might reasonably be questioned in this case, involving alleged medical malpractice in February, 2003. Moreover, there is no factual basis for any suggestion that the National Transplantation Pregnancy Registry[6] was ever the focus of any investigation.

In question for review #7, Petitioners suggest that Judge Fisher should have recused himself because "his wife, Mrs. Carol Fisher was a co-worker of Dr. Vincent Armenti and assisted him with several educational studies and research at Temple University." Dr. Armenti practiced at Temple University for a period of time after February, 2003 and returned to Thomas Jefferson University in 2007. While the Temple University web site[7] does identify one "Carol A. Fisher, B.A." as an administrative staff member in the Department of Surgery, it is not known if she is married and, if so, to whom. In any event, she was

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[6] The National Transplantation Pregnancy Registry was established at Thomas Jefferson University in 1991 "to study the outcomes of pregnancies in female transplant recipients and those fathered by male transplant recipients." The principal investigator of the ongoing study is Vincent Armenti, M.D., Ph.D. *See*, http://www.tju.edu/NTPR/.

[7] *See*, http://www.temple.edu.

not a member of Dr. Armenti's research staff.[8] These unsupported contentions would not cause a reasonable person to conclude that Judge Fisher's impartiality in this case might reasonably be questioned.

In question for review #8, Petitioners suggest that Judge Rendell should have recused herself "regarding the failed MCARE Act of the husband, Governor Edward Rendell of Pennsylvania who instituted this law." Petitioners are wrong in their characterization of the Medical Care Availability and Reduction of Error (MCARE) Act, 40 P.S. §1303.101, *et seq.* as "failed" and "abolished." It is in fact the law in Pennsylvania. Whatever Governor Rendell's involvement was in the passage of this law, it would not cause a reasonable person to conclude that Judge Rendell's impartiality in this case might reasonably be questioned.

The assertions advanced by Petitioners as reasons for recusal are unfounded with no support from record evidence, vague and incomprehensible, indirect, attenuated and simply would not cause a reasonable person to conclude that the impartiality of Judges Fisher and Rendell might reasonably be questioned.

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[8] One on-line biography of Judge Fisher describes his wife, Carol, as an "education consultant." *See*, http://www.americola.com/sites/D._Michael_Fisher.

CONCLUSION

There are no compelling reasons which support the grant of the Petition for Writ of Certiorari in this matter. The decision of the Court of Appeals is in conformity with long-standing principles and precedent and correctly affirmed the Order of the District Court. Accordingly, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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